

Protest of) Date: September 10, 1992
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PARAGON DYNAMICS, INCORPORATED)
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Solicitation No. 104230-92-A-0106) P.S. Protest No. 92-58

DECISION

Paragon Dynamics, Incorporated (PDI), protests the terms of Solicitation No. 104230-92-A-0106 for printed wiring boards and cables. The solicitation was issued by the Office of Procurement, Headquarters, on May 21, 1992, with an offer due date of June 22. Four amendments to the solicitation were issued. Amendment A01, dated June 1, provided five drawings inadvertently omitted from the solicitation package. Amendment A02, dated June 15, 1992, responded to forty-five questions raised by potential offerors, added additional clauses and forms and a revised pricing sheet. The answers stated, in part, that the First Article test would take one week and that progress payments to the awardee would not be considered. The amendment extended the offer due date eighteen days, to July 10, while denying a request for a thirty day extension. Amendment A03, dated June 19, answered six additional questions but did not extend the proposal due date.

Amendment A04, dated July 8, extended the offer due date to July 17, and made four changes to the solicitation: a) a clarification of the purpose of the in-plant test; b) a clarification of information regarding the First Article; c) the addition of a pricing section for optional quantities; and d) an extension of the delivery schedule so that testing and production deliveries would occur 16-18 weeks after contract award rather than the 5-8 weeks originally set forth in the solicitation.

By letter dated July 21, received by our office on July 27, PDI protested two aspects of Amendment A04. First, PDI claims that it only received Amendment A04 on July 13, and that the four days between its receipt of the amendment and the due date (which included a weekend) was too short, affording it insufficient time to address the changes adequately. In addition, PDI states that the revised delivery schedule is unrealistic, as

First Article testing will take longer than the one week allowed by the solicitation so that starting production one week after First Article testing would be unreasonable. It alleges that these deficiencies violate section 10.1.2 a. of the Procurement Manual (PM) which provides, in pertinent part, that:

Contracting officers must -

- a. Provide an opportunity for small, minority-owned and woman-owned businesses to compete, by including them on mailing lists, allowing reasonable proposal preparation time, and establishing realistic delivery schedules.

PDI requests cancellation of the solicitation and reissuance of a revised solicitation with these problems corrected.^{1/}

The contracting officer states that PDI's protest is untimely filed pursuant to PM 4.5.4 b., in that protests against deficiencies apparent on the face of the solicitation must be protested before the offer due date, and that PDI's protest was received by our office well after that date. As to the merits of PDI's protest, he states that the solicitation was not restricted to small or minority-owned businesses, and that the solicitation complied with the requirements of PM 2.2.5 and 4.1.2.^{1/} The contracting officer deems the delivery schedule, as amended, to be reasonable, since the production of the items is straightforward once the purchase of certain components with long lead times is made. To help alleviate this possible problem, the solicitation permits the contractor to purchase and commence production on those specified long lead time components prior to first article approval.

The contracting officer also argues that the time he allowed to respond to Amendment A04 was sufficient. The amendment was issued on July 8, 1992, specified July 17 as the new proposal date, and only answered three relatively unimportant questions and extended the delivery schedule. He notes that offerors had a total of 57 days in which to respond from the original date of the issuance of the solicitation, and that PDI did, in fact, submit a response to Amendment A04. The contracting officer states that he

^{1/} In a letter to its Congressman written on August 8 and forwarded to our office on August 18, PDI complains about two other issues. First, it asserts that there is no benefit to it of the Postal Service conducting procurements under the PM and argues that the Postal Service should adopt the provisions of the Federal Acquisition Regulations. Second, it argues that the Postal Service's policy against providing progress payments to contractors unduly discriminates against small and minority-owned businesses.

^{2/} PM 2.2.5 a. provides that it is "essential" that the delivery schedule be "realistic." PM 4.1.2 b. provides that "all solicitations must allow sufficient time for offerors to prepare and submit proposals, normally not less than 15 days when purchasing standard commercial products and not less than 30 days in other cases." PM 4.1.2 i.2 provides that "[a]n amendment must be issued in sufficient time to permit affected offerors to consider it in submitting or modifying their proposals."

cannot tailor the requirements of the Postal Service to fit the needs of every potential offeror, and that the extensive competition received on this solicitation shows that the time frames of which PDI complains were adequate.

As an initial matter, we must consider whether PDI's protest was timely filed, as we are without authority to consider a protest which is untimely. See, e.g., International Jet Aviation Services, P.S. Protest No. 87-36, September 1, 1987; Southern California Copico, Inc., P.S. Protest No. 83-2, August 31, 1983 (citing cases). Unlike the Comptroller General, we have no regulatory authority to waive or disregard an issue of timeliness in a particular case. See, e.g., Amerijet International, Inc., P.S. Protest No. 87-45, September 2, 1987; Wilton Corporation, P.S. Protest No. 83-45, September 9, 1983. Here, PDI has protested against terms of the solicitation which were apparent from the face of the solicitation. Pursuant to PM 4.5.4 b., such protests must be filed before the date and time for receipt of proposals. See also Neil Gardis & Associates, Inc., P.S. Protest No. 92-08, March 13, 1992. PDI's protest, dated four days after proposals were due and received by our office ten days after that date, is untimely filed and must be dismissed. However, we will briefly give our views on the merits of PDI's protest. See American Telephone Distributors, Inc., P.S. Protest No. 87-117, February 23, 1988 (citing cases).^{1/}

In a previous case, we adopted the Comptroller General's standard as to the propriety of timing of an amendment to a solicitation:

The contracting activity has discharged its responsibility when it issues and dispatches an amendment in sufficient time to permit all prospective bidders to consider the information in preparing their bids. The propriety of a particular procurement generally does not depend on whether some prospective bidders, in fact, fail to receive an amendment in sufficient time to consider it in preparing their bids, but on whether the Government obtained adequate competition and reasonable prices. Space Services International Corporation, B-207888.4-7, December 13, 1982, 82-2 CPD & 525.

Tulsa Diamond Manufacturing Corp., et al., P.S. Protest Nos. 85-18, 85-20, 85-23, June 20, 1985, quoting Swintec Corporation, et al., Comp. Gen. Decs. B-212395.2 et al., April 24, 1984, 84-1 CPD & 466. In this case, Amendment A04 was reasonable, as adequate competition was received; indeed, even PDI was able to submit a proposal based on the revised requirements. Additionally, the amendment did not substantially alter the solicitation requirements, but rather made a couple of minor modifications that

^{3/} The points raised by PDI in its letter to its Congressman are, likewise, untimely. Additionally PDI's doubts as to the efficacy of the PM in general and postal policy concerning progress payments in particular are not issues within the jurisdiction of our protest function. See BWN Contracting Co., Inc., P.S. Protest Nos. 89-38, 89-50, and 89-57, October 4, 1989.

would have a small effect on an offeror's proposal.^{4/}

PDI's argument that the lengthening of the delivery schedule was an occurrence which should have required a delay in the procurement process runs counter to the well-settled precedent that protests against a provision as unduly restrictive must show, once the contracting officer has established prima facie support that the restriction is reasonably related to the Postal Service's minimum needs, that the requirement is clearly unreasonable. See Telesec Temporary Services, P.S. Protest No. 92-05, March 16, 1992. The contracting officer has enunciated a reasonable rationale for the time frame set forth in the delivery schedule and the protester has failed to show that this time frame is clearly unreasonable.

The protest is dismissed.

William J. Jones
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Office of Contracts and Property Law

^{4/} Since this is a negotiated procurement, the offeror could modify its proposal after proposal opening if it believed that the amendment significantly impacted it. The modification would then be considered as a late proposal under PM 4.1.3 d., which provides for consideration of late proposals unless such consideration would harm the competitive process or would not be in the best interests of the Postal Service.